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INDEPENDENCE AND IMPARTIALITY OF THE JUDICIARY, JURORS AND ASSESSORS AND THE INDEPENDENCE OF LAWYERS

Written statement submitted by the International Federation of Human Rights, a non-governmental organization in consultative status (category II)

The Secretary-General has received the following communication, which is circulated in accordance with Economic and Social Council resolution 1296 (XLIV).

[30 July 1991]

1. In its resolution 1990/23 the Sub-Commission requested Mr. Louis Joinet to bring to its attention examples of measures or practices that had had the effect of strengthening or undermining the independence of the judiciary and the protection of lawyers in accordance with United Nations standards.

2. The International Federation of Human Rights (IFHR) is gratified at the decisions of the Commission on Human Rights and the General Assembly which, at their most recent sessions, hailed with satisfaction the mandate thus

entrusted to the Special Rapporteur. The IFHR considers this mandate both as an end result - that of nearly 10 years of deliberations by the Sub-Commission on the subject - and as a starting point - that of a new, more informative approach on the subject.

3. From this viewpoint, the IFHR would like to inform the Sub-Commission and its Special Rapporteur concerning measures and practices affecting the independence of the judiciary in Pakistan, with particular reference to paragraphs 1 and 2 of the Basic Principles on the Independence of the Judiciary (adopted in 1985), which stipulate that: "The independence of the judiciary shall be guaranteed by the State and enshrined in the Constitution or the law of the country. It is the duty of all governmental and other institutions to respect and observe the independence of the judiciary." (para. 1); and that "The judiciary shall decide matters before them impartially, on the basis of facts and in accordance with the law, without any restrictions, improper influences, inducements, pressures, threats or interferences, direct or indirect, from any quarter or for any reason" (para. 2).

4. The IFHR has found that there exists in Pakistan a tradition concerning the subordination of the higher judiciary to the executive. In 1981 President Ali Bhutto obtained the power to transfer judges from one court to another without their consent and to restrict to four years the term of office of Supreme Court judges. Under the martial law regime established by General Ziah, apart from the power given to the military courts, which were free from any control by the judiciary, the Supreme Court and High Court judges were required to take an oath of allegiance - about 16 of them refused to do so and were immediately dismissed, as was Mr. Dorab Patel. The same Presidential Decree (dated 14 March 1981) empowered the President to appoint High Court judges temporarily to the Supreme Court and extended his power to transfer them from one court to another or to a Sharia court for two years and to consider them as having resigned in case of refusal.

5. Before terminating martial law, General Ziah had the Constitution changed so as to prevent the judiciary from invalidating any proceedings or any action instituted by those administering martial law. Several years have passed without any change being made to these provisions, which the IFHR considers are such as to allow and indeed encourage the executive to exert pressure upon the judiciary

6. It is the President of Pakistan who appoints judges to the Supreme Court and the High Courts after consultation with the Chief Justice, and those appointments may be "provisional". Where judges of the lower courts are concerned, the appointments are made by the the governor of the respective province. The judges presiding over the Special Courts are also appointed by the President, who suddenly proceeded on the eve of the 1990 elections to appoint 19 new High Court judges, together with the judges put in charge of the special proceedings instituted against the members of Mrs. Bhutto's Government. This armoury of provisions is used by those in power to reduce the judiciary to a state of dependence of which there is widespread criticism in Pakistan.

7. In its report for 1990 Pakistan's Committee on Human Rights cites the case of a judge (Mr. Qazi Jamil) provisionally appointed to the High Court of Peshawar and finally dismissed in pursuance of a decision handed down by the President of the Provincial Assembly. After obtaining a stay of proceedings from the Supreme Court, the President of Pakistan confirmed the appointment of the provisional judges who had opposed the vote of censure, only Judge Qazi Jamil, who had supported it, being dismissed. The affair caused a great stir in Pakistan and is regarded as a warning given by the executive to judges tempted to challenge its actions.

8. Another typical case is that of Judge Abdul Hafeez Memon of the Supreme Court, who was appointed provisionally and dismissed with no reason given in October 1990, but of whom it is purportedly believed that he was punished for having been the candidate supported by the Pakistan People's Party and for his previous connections with the Party (Judge Memon had been dismissed by Ziah in 1981).

9. Again, mention must be made of the case brought before the Supreme Court by Mrs. Bhutto, who urged that the proceedings instituted simultaneously against her in the Special Courts of Lahore and Karachi compelled her to make exhausting and expensive journeys to and fro between those two cities, which are over 15,000 kilometres apart, and asked for the proceedings to be conducted jointly in the court at Karachi, where she resides. Three of the Supreme Court judges heard the parties concerned and declared the request admissible, but the Government immediately changed the rules concerning audiences of the Special Courts so as to allow the courts to travel, and the Supreme Court on those grounds declared the request inapplicable. All the same, the Special Court in Lahore later refused to grant Mrs. Bhutto's request to stand trial in Karachi and the former Prime Minister is therefore compelled to make innumerable journeys incompatible with her activities as a member of parliament and leader of her party.

10. Many examples of malpractice are cited in Pakistan on the part of judges in the lower courts and even some High Court judges. Consequently, while the independence of many judges is unquestionable and acknowledged, others, and more particularly the judges appointed to the Special Courts, are regarded as agents of the country's rulers. To make things worse, in Pakistan judges are protected from any criticism by the contempt of court proceedings which are more and more widely resorted to and which the IFHR considers as seriously detrimental to freedom of information. Taking the same view, Judge Dorab Patel has several times publicly stressed that article 204 of the Constitution, which authorizes penal proceedings against those who criticize judgements or judges, even impartially, should be amended.

11. Paragraph 6 of the Basic Principles on the Independence of the Judiciary states that: "The principle of the independence of the judicary entitles and requires the judiciary to ensure that judicial proceedings are conducted fairly and that the rights of the parties are respected." The IFHR has noted a great many violations of this provision arising from the common practice of arbitrary arrest and detention often involving torture and ill-treatment.

12. Most of the persons arrested, often without a warrant, were subjected during their detention to torture by the police or by the army's special services. The Central Investigation Agency (CIA) is one of the branches of the police notorious for torturing detentees. Despite numerous complaints, police officers are rarely convicted and the penalties usually consist in transfers to other posts. The army's special services (Inter-Service Intelligence Agency - ISA) also commonly practise torture.

13. The treatment most often inflicted is to suspend accused persons by the manacles with which their hands are shackled behind their backs, causing dislocation of the shoulder joints, or to hang them head downwards for hours at a time. Several witnesses claim to have been forced to remain standing, night and day, for a week. Beatings, notably on the soles of the feet, electric shocks and burning with cigarettes are common practice. These physical tortures are accompanied, in selected cases, by threats of violence against the detainee's family.

14. Among those tortured we may cite the cases of Mr. Ranan Ali Danish, of the Pakistan Students' Federation (PSF) in Karachi, or Mr. Muhammed Sadiq Umran, a former minister in the Baluchistan Government, who were arrested in the autumn of 1990 and tortured for several weeks on CIA or SIA premises. The same applies to Mr. Shanawaz Shani, Mr. Maqbool Channah, Mr. Jahangir Ichang and Mr. Ejaz Ichoso, youth activists in the PPP some of whom were forced to remain standing for several days, beaten and given electric shocks. Public feeling was particularly stirred by the case of young Raheela Tiwana, an activist in the PSF, a student movement linked to the PPP, who was transferred to the psychiatric hospital in Karachi following the tortures she underwent during her detention.

15. The persistence of this situation is facilitated by resort to successive indictments. Thus it is common practice to draw up against accused persons an initial indictment (First Investigation Report) which allows them to be held in custody for a fortnight simply on the authority of a law officer (magistrate) and to prefer new charges against them when that time is up, so that they can be detained almost indefinitely with no real legal check.

16. In conclusion, the IFHR is urging upon the Pakistan authorities the need for strong action to put an end to the impunity enjoyed by the police and the army for their routine practice of torture and to compel them to respect the rules of penal procedure established to protect individual freedoms. Furthermore, the IFHR is calling upon the Pakistan Government to abolish the Special Courts, whose maintenance is incompatible with the right to a fair trial, the rights of the defence and the independence of the judiciary.

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